

**FILED**  
Clerk  
District Court

**JUN 26 2008**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

ORIGINAL

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**UNITED STATES DISTRICT COURT  
DISTRICT OF THE NORTHERN MARIANA ISLANDS**

UNITED STATES of AMERICA,  
  
Plaintiff,

v.

JAMES OCHCHA,  
  
Defendant.

Case No.: 08 - 00017 - 003

**PLEA AGREEMENT**

Date:

Time:

Judge: Hon. Alex R. Munson

Pursuant to Rules 11(c)(1), (c)(1)(A) and (c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and Defendant, JAMES OCHCHA, have reached a plea agreement in the above-captioned case. Defendant has been advised and understands that, under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the terms of this agreement are merely recommendations to the Court. The Court can reject them without permitting Defendant to withdraw his plea of guilty and can impose a sentence that is more severe than he anticipates.

The Agreement follows:

1 Under Rule 11(c)(1) of the Federal Rules of Criminal Procedure (“Fed. R.  
2 Crim. P.”), Defendant will plead guilty to Count I of the Indictment, which charges him with  
3 one count of Conspiracy to Sell Government Property in violation of 18 U.S.C. §§ 371 and  
4 641, a Class D felony. Defendant will also plead guilty to Count III of the Indictment, which  
5 charges him with one count of Destruction of Veterans’ Memorials in violation of 18 U.S.C.  
6 § 1369, a Class C felony. Defendant agrees that the time between the filing of this agreement  
7 and the date Defendant is sentenced following his change of plea is excludable under the  
8 Speedy Trial Act, 18 U.S.C. § 3161.

9 2. In exchange for Defendant’s guilty plea:

10 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the government agrees to  
11 dismiss any remaining charges against Defendant in the Indictment.

12 b. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the government will  
13 recommend that the Court impose a term of imprisonment at the low end of the applicable  
14 range of sentences for the offense level, as determined by the Court under the United States  
15 Sentencing Guidelines (“U.S.S.G.,” the “guidelines,” or the “sentencing guidelines”). This  
16 term shall not include probation or a split-sentence, even if permitted under the guidelines.

17 c. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the government agrees to  
18 bring no further charges against Defendant arising from information learned during the  
19 investigation that brought about this plea agreement, if any.

20 d. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the government will  
21 recommend a two-level reduction in the offense level for acceptance of responsibility under  
22 U.S.S.G. § 3E1.1(a), provided Defendant continues to demonstrate such acceptance through  
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1 sentencing. As of the date of this agreement, Defendant has timely notified authorities of his  
 2 intention to enter a plea of guilty. If, and only if, Defendant

- 3 i. pleads guilty pursuant to this agreement;
- 4 ii. on or before the date scheduled by the Court; and if
- 5 iii the adjusted offense level prior to the application of U.S.S.G.

6 § 3E1.1(a) is sixteen (16) or greater,

7 the government will move the Court for an additional one-level downward adjustment in the  
 8 offense level under U.S.S.G. § 3E1.1(b).

9 e. Should Defendant move for a two-level downward adjustment for  
 10 having had a role as a minor participant in the offense under U.S.S.G. § 3B1.2(b) and *United*  
 11 *States v. Webster*, 996 F.2d 209 (9th Cir. 1993), the government, pursuant to Fed. R. Crim. P.  
 12 11(c)(1)(B), will not oppose the motion and will leave the ruling on that motion to the Court's  
 13 discretion.  
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15 3. The United States and Defendant stipulate to the following facts and  
 16 application of the guidelines:

17 a. The amount of loss attributable to the offense conduct in Counts I and  
 18 III of the Indictment is \$35,490.40.

19 b. The applicable section of the guidelines for the offenses to which  
 20 Defendant is pleading guilty is § 2B1.1.

21 c. STIPULATED DEPORTATION. Either before or immediately  
 22 following sentencing, Defendant agrees to appear before an Immigration Judge or other  
 23 applicable Judge of the United States and stipulate to the entry of an order of deportation.  
 24 Defendant understands that Defendant will not be deported until Defendant has served any  
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1 criminal sentence imposed in this or any other case. Defendant further waives any right to  
2 appeal, re-open or challenge the deportation order.

3 4. Except as expressly provided in paragraphs two (2) and three (3), above, the  
4 parties have made no agreement concerning the facts, the guidelines, or their application to  
5 this case. Both parties reserve the right to present and argue evidence on all matters affecting  
6 the guidelines calculation.

7 5. The government reserves its full right of allocution, including the right to  
8 present to any information to the Court for its consideration in fashioning an appropriate  
9 sentence, the right to correct misstatements, misrepresentations, or omissions by Defendant,  
10 and the right to answer without limitation any questions asked by the Court.

11 6. Defendant has been advised and understands that if the Court accepts his plea,  
12 he will be adjudged guilty of a felony offense and that such adjudication may deprive him of  
13 certain civil rights or privileges.

14 7. The maximum statutory penalties for the offense in Count I of the Indictment  
15 to which Defendant is pleading guilty are as follows:  
16

- 17 a. a term of imprisonment of up to five (5) years;  
18 b. a fine of up to two hundred fifty thousand dollars (\$ 250,000.00);  
19 c. a term of supervised release of not more than three (3) years; and  
20 d. a mandatory special assessment of one hundred dollars (\$100.00).

21 8. The maximum statutory penalties for the offense in Count III of the Indictment  
22 to which Defendant is pleading guilty are as follows:

- 23 a. a term of imprisonment of up to ten (10) years;  
24 b. a fine of up to two hundred fifty thousand dollars (\$250,000.00);  
25

1 c. a term of supervised release of not more than three (3) years; and

2 d. a mandatory special assessment of one hundred dollars (\$100.00).

3 9. Defendant agrees to pay the mandatory special assessments no later than the  
4 date of his sentencing with a money order or certified check payable to the Clerk, United  
5 States District Court. Failure to do so, unless the Court makes a finding of indigence, will  
6 relieve the government of its obligation to recommend a reduction in the offense level for an  
7 acceptance of responsibility under the guidelines.

8 10. Defendant understands that the Court must consider the sentencing guidelines  
9 in determining an appropriate sentence in this case but that the guidelines are only advisory  
10 and are not binding on the Court. Defendant also understands that the Court alone makes all  
11 sentencing decisions, including the application of the guidelines and the sentence to be  
12 imposed. The Court, in its discretion, may impose any reasonable sentence up to and  
13 including the maximum penalties set by law after taking into account the factors enumerated  
14 in 18 U.S.C. § 3553(a). Defendant is advised and further understands that, even if the Court's  
15 guideline determinations and sentence are higher than Defendant may expect, Defendant will  
16 not be allowed to withdraw his guilty plea. And Defendant understands that, in the United  
17 States Penal System, there is no parole and if the Court sentences him to jail he will not be  
18 released on parole.  
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20 11. Defendant understands that he may have the right to file a direct appeal from  
21 his conviction or sentence. Defendant knowingly and voluntarily waives any right he may  
22 have to file such an appeal. Defendant also waives any and all motions, defenses, probable  
23 cause determinations, and objections which he could assert to the indictment or to the Court's  
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entry of judgment against him and imposition of sentence upon him. Defendant further waives:

- a. any right to appeal the Court's entry of judgment against him;
- b. any right to appeal the imposition of sentence upon Defendant under 18 U.S.C. § 3742 (sentence appeals); and
- c. any right collaterally to attack Defendant's conviction and sentence under 28 U.S.C. §§ 2255 and 2241, motions to reconsider or reduce his sentence, or any other collateral attack.

Defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack that he might file challenging his conviction or sentence in this case. This waiver, however, does not prevent Defendant from challenging the effectiveness of his attorney after conviction.

12. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the government retains its right to appeal any of the Court's sentencing determinations.

13. Defendant has been advised and understands that he has the following rights:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right at trial to be presumed innocent and require the government to his guilt beyond a reasonable doubt;
- d. the right to be represented by counsel – and, if necessary, have the Court appoint counsel to represent Defendant – at trial and every other critical stage of the proceeding;

1 e. the right at trial to see and hear all of the witnesses and for his counsel  
2 to cross-examine them in his defense;

3 f. the right at trial to testify and present evidence but only if he  
4 voluntarily elected to do so;

5 g. the right at trial to the issuance of subpoenas or to compel the  
6 attendance of witnesses to testify in his defense; and

7 h. the right at trial, if he decided not to testify or present evidence, not to  
8 have those facts used against him and to be otherwise protected against self-incrimination.

9 Defendant is advised and further understands that, if he pleads guilty and the Court accepts  
10 his plea, he waives all of these rights.

11 14. Defendant has been advised that the offenses to which he is pleading guilty  
12 have separate and distinct elements or parts.

13 a. Count I of the Indictment charges Defendant with Conspiracy to Sell  
14 Government Property. This offense has three (3) elements. Those elements are:

15 i. There was an agreement between two or more persons to  
16 commit the offense of unauthorized Sale of Government Property in violation of 18 U.S.C.  
17 § 641;

18 ii. Defendant became a member of the conspiracy knowing of at  
19 least one of its objects and intending to help accomplish it; and

20 iii. One of the members of the conspiracy performed at least one  
21 overt act for the purpose of carrying out the conspiracy, with the finder of fact agreeing on a  
22 particular overt act.  
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1                   b.       Count III of the Indictment charges Defendant with Destruction of  
2 Veterans' Memorials. This offense has two (2) elements. Those elements are:

3                   i.       Defendant willfully injured or destroyed any structure or other  
4 monument on public property commemorating the service of any person or persons in the  
5 armed forces of the United States; and

6                   ii.     That structure or other monument was located on property  
7 owned by, or under the jurisdiction or, the Federal Government.

8 Defendant understands that if the case against him were to go to trial, the government  
9 would have to prove each of these elements beyond a reasonable doubt.

10           15.     This agreement is binding on the government only if Defendant pleads guilty,  
11 fulfills all of his obligations under the agreement, does not engage in any conduct constituting  
12 obstruction of justice as defined in U.S.S.G. § 3C1.1, and does not commit any new offenses.

13           16.     Defendant understands that if he violates this agreement in any way, the  
14 government will have considered the agreement to have been breached. In that event,  
15 Defendant shall not have the right to withdraw his plea of guilty. The government, however,  
16 will be released from all obligations and restrictions imposed by the agreement. The  
17 government may, in its sole discretion and without limitation, proceed with any one or more  
18 of the following steps:

19                   a.     go forward with the guilty plea and sentencing;

20                   b.     make any and all sentencing recommendations that it deems  
21 appropriate;

22                   c.     treat the agreement as a nullity, that is, as though the parties had never  
23 entered into it, withdraw the agreement, and go to trial on the Indictment;  
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d. pursue additional charges against Defendant; and

e. use against Defendant, in this and in any other prosecution and


proceeding, any and all information, statements, and testimony – including stipulations made in this agreement – that he has provided at any time to the government, the grand jury, or to the Court.

17. This agreement is limited to the District of the Northern Mariana Islands. It does not bind any other federal, state, or local authorities.

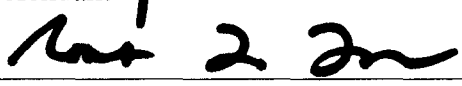
18. This agreement constitutes the entire agreement between the parties. No other promises or inducements have been made concerning the plea in this case. Defendant acknowledges that no person has, directly or indirectly, threatened or coerced Defendant to enter into this agreement. Any additions, deletions, or modifications to this agreement must be made in writing and signed by all parties in order to be effective.

19. Counsel for Defendant states that he has read this agreement, been given a copy of it for his files, explained it to Defendant, and states that to the best of counsel's knowledge and belief, Defendant understands the agreement.

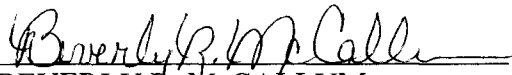
20. Defendant states that he has read this agreement or had it read to him, has discussed it with his counsel, understands it, and agrees to its provisions.

  
JAMES OCHCHA  
Defendant

  
Date

  
ROBERT TENORIO TORRES  
Counsel for Defendant

  
Date

  
BEVERLY R. McCALLUM  
Assistant United States Attorney

  
Date